

RALPH J. MELLIN

IBLA 71-82

Decided June 19, 1972

Appeal from decision (I 3734) by Idaho land office, Bureau of Land Management, rejecting application for desert land entry.

Affirmed.

Desert Land Entry: Applications -- Desert Land Entry: Lands Subject to -- Withdrawals
and Reservations: Reclamation Withdrawals

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of a withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

APPEARANCES: Ralph J. Mellin, pro se.

OPINION BY MR. FISHMAN

Ralph J. Mellin has appealed from a decision dated October 9, 1970, by the Idaho land office, Bureau of Land Management, which rejected appellant's desert land application because the rejected lands are withdrawn by order of January 28, 1952 for reclamation purposes, pursuant to the Act of June 17, 1902, § 3, 43 U.S.C. § 416 (1970).

The appellant argues that the lands are not withdrawn, asserting there was no Federal Register publication. However, the order appears in the Federal Register of March 4, 1952 (17 F. R. 1907-1909).

Lands which are withdrawn are not subject to appropriation under the desert land laws. See Leroy Martin, 4 IBLA 160 (1971). A desert land application for withdrawn lands must be rejected since such lands are not subject either to classification under the Taylor Grazing Act,

§ 7, 43 U.S.C. § 315(f) (1970), or to disposal under the public land laws. Timothy O. Witt, A-25664 (April 1, 1949). An application for withdrawn lands must be rejected and it will not be suspended pending restoration of the land. See 43 CFR 2091.1 (1972). Cf. David R. Rasmussen, Robert M. Martin, A-30549 (October 11, 1966); Edwin L. Doheny et al., A-26868, A-26897 (July 13, 1954); W. C. Dalzell, A-26346 (March 28, 1952).

The appellant asserts that the lands are not suitable for reclamation purposes. Assuming, arguendo, that the assertions were correct, it would not help the appellant. Even where it is impossible to accomplish the purpose of a withdrawal, the withdrawal is nevertheless effective to preclude the disposal of the land. Robert M. Ford, 4 IBLA 321 (1972). Cf. Juanice H. McCain et al., 4 IBLA 188 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Member

Edward W. Stuebing, Member

